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C O N F I D E N T I A L SECTION 01 OF 04 BAGHDAD 000299

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TAGS: [PGOV](#) [PREL](#) [IZ](#)
SUBJECT: ARTICLE 140: WHERE ARE WE NOW?

REF: A. BAGHDAD 244 (MOSUL BLAST)
[¶B.](#) BAGHDAD 225 (SA AND KURD COR)
[¶C.](#) BAGHDAD 205 (ANBAR BORDER CONCERNS)
[¶D.](#) BAGHDAD 203 (UNAMI SRSG)
[¶E.](#) BAGHDAD 127 AND PREVIOUS (KIRKUK BOYCOTT)
[¶F.](#) BAGHDAD 107 ("NATIONAL PROJECT")
[¶G.](#) BAGHDAD 66 (KURDS-MALIKI)
[¶H.](#) 07 BAGHDAD 4199 (KURDS-MALIKI)
[¶I.](#) 07 BAGHDAD 3956 (ABDEL MEHDI ON REFERENDUM)
[¶J.](#) 07 BAGHDAD 3924 (BARHAM SALIH ON REFERENDUM)

Classified By: Senior Adviser David Pearce for Reasons 1.4 (B) AND (D)

[¶1.](#) (C) Summary: The issue of Article 140 and the status of Kirkuk and the disputed territories is solidly in the middle of the national debate, although there are significant disagreements on all sides in terms of addressing this complex problem. A fair, transparent and agreed resolution to the issues involved is fundamental to good relations between Kurds and the rest of Iraq. In December the 3 plus 1 and KRG President Masoud Barzani agreed to invite the United Nations to provide technical assistance and make progress towards establishing a process for resolution within six months. Along with UNAMI, we will continue our strong engagement in several key areas: technical, technical/political, national political and security. End Summary.

Technically, What is Article 140?

[¶2.](#) (C) Article 140 of the Iraqi Constitution directs the GOI to resolve Kirkuk and other disputed territories via a mechanism outlined in Article 58 of the Transitional Administrative Law. It calls for determining the will of citizens of disputed areas through "normalization," census, and referendum to be held by December 31, 2007. PM Maliki appointed a high committee in August 2006 to make recommendations on Article 140 implementation. The Committee has been developing a process for adjudicating restitution and compensation packages for persons forcibly resettled or deported during the Saddam era who wish to return to their homes/property or be resettled in provinces of origin. It has also been addressing property claims issues, in conjunction with the Commission for the Resolution of Real Property Disputes (CRRPD). This process is ongoing, but it has far to go.

[¶3.](#) (C) Article 140 also requires the agreed revision of boundary changes made in the Saddam era. The Iraqi Government and its Presidency Council is to make recommendations to the Council of Representatives. The PM's high committee submitted a set of boundary adjustment recommendations to the Prime Minister on December 31. But, if members of the Presidency Council cannot agree unanimously on these recommendations, they are to appoint a neutral arbitrator. If they cannot agree on an arbitrator, they are

to request the United Nations to appoint one.

Practically and Politically,
Article 140 is about the Future of Iraq

14. (C) The lapse of the December 31, 2007 deadline for a referendum on the status of Kirkuk and the disputed territories caused more than just the specter of a constitutional question -- it forced a fresh look at the Article 140 process as a key part of national political accommodation. Deputy Prime Minister Barham Saleh told us in December it was the "hardest issue in Iraq" (ref J). Resolution is key to Kurdish-Arab relations. Establishing an agreed process on 140 could facilitate progress on other key legislation important to reconciliation, such as provincial powers, elections and hydrocarbons -- and vice versa.

15. (C) By contrast, the lack of resolution feeds the insurgency, as Al-Qaeda and affiliated terrorists trade on Arab fears of Kurdish encroachment. The January 23 blast that leveled an entire city block in Mosul, killing at least 38 and wounding hundreds, is but one recent example. Even in the midst of responding to a humanitarian crisis, GOI and provincial leaders were focused on the political divide between Kurds and Sunni Arabs, and efforts to exploit it (ref A).

16. (C) Over the past four years the Kurds have methodically extended their political and security influence well beyond the old Green Line farther into the adjoining governorates of Ninewa, Kirkuk/Tameem, Salah al-Din, and Diyala. Central government authority was weak or absent in 2003, and the Kurds moved Pesh Merga and Asayesh intelligence forces into

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Kirkuk and other adjoining areas. In 2005 the Sunnis boycotted provincial elections, and the Kurds assertively stepped in. The result was Kurdish political dominance on the Provincial Councils of Ninewa and Kirkuk, and strong representation in the governorates like Diyala and Salah al-Din.

17. (C) The perception of Kurdish overreach, matched with the perception of complicity by a Shia-dominated GOI and an acquiescent coalition, bred Arab/Turkmen/minority resentment. This has been expertly exploited by AQI and other groups to fuel the insurgency, and it has undermined the Kurds' own case with other Iraqi groups for redress of grievances. Consequently, hard as the complex of Article 140 issues is, leaving them to fester could undermine the security and stability of a lengthy swath of disputed districts that extend from the Iraq-Turkey-Syria triborder area in the northwest, southeast to below Mosul and Kirkuk, and then down the Jabal Hamrin ridgeline to the hills of the Iran-Iraq border in Mandali, just east and north of Baghdad.

18. (C) Even pro-implementation Article 140 high committee chairman (and Minister of Science and Technology) Raid Fahmi (Iraqiya, Sunni Arab) told us the Kurds need to counteract their image of being "very greedy" in terms of Kirkuk. The failure to address the issue causes government instability as well. The lack of progress triggered political realignment in 2006 when the Kurdish political parties played a significant role in bringing down the al-Jafari government -- due to the perception he had cut a deal with Turkey not to move on Article 140 implementation. The very same issue -- failure to move on 140 -- again played a large part in the Kurds' threat to bring down the Maliki government this past December (refs G and H).

Enter UN Technical Assistance

19. (C) On the positive side, after U.S. and UN engagement with Iraqi leaders, in mid-December the Presidency Council,

the Prime Minister and Kurdistan Regional Government (KRG) President Massoud Barzani reached tacit agreement on a six-month delay in implementation and welcomed UNAMI technical assistance to find a way forward. Although not legally necessary, the Kurdish National Assembly (KNA) voted on December 26 to approve a six-month extension in implementation, providing the Kurdish leadership with needed political cover. (Note: This six-month timeframe should not be viewed as replacing a December 31 deadline with a June 30 deadline for a referendum. UNAMI describes the timeframe as intended to demonstrate its willingness to start the process and produce results as quickly as possible. UNAMI considers that it is not bound by any deadlines, other than those in UN Security Council resolutions, and it does not interpret this as a new deadline for Article 140 or a referendum. End Note.) In fact, a referendum may or may not ultimately be necessary to resolving Article 140 issues; many Iraqi leaders are talking about a political agreement as preferable (refs I and J). Even the KDP, while pressing for a resolution of the issues within six months, has privately dropped insistence on a referendum.

Political Dialogue Increasing

¶10. (C) Although supporting radically different political positions on the issue, reinvigorated political dialogue has since begun. The so-called "National Project" announced on January 13 is one example, wherein some mostly Sunni Council of Representatives (COR) members touted a new coalition that is widely viewed as anti-Kurdish (ref F). Increased rhetoric against Article 140 by Sunni Arab and Turkmen politicians is making some Kurds nervous (ref B), but such political discussion, even if ugly, represents the beginning of national engagement on an issue fundamental to a national political accommodation.

Progress Locally in Kirkuk

¶11. (C) In another encouraging development on the local level, Sunni Arab members of the Kirkuk Provincial Council (PC) ended their year-long boycott and returned to the PC in December (ref E). Negotiations to bring about conditions for the Turkmen bloc to return have yet to show similar progress, and the Turkmen -- backed up by Turkey -- have complained via letter and demarche to the UNSGY about UNAMI's role in promoting political agreement among the blocs on an additional six months to find a way forward on Article 140. Kurdish bloc willingness to make concessions in Kirkuk to end the boycott illustrates that the Kurds understand that they

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have overreached in forcing their territorial aims and now need to address legitimate grievances, both in Kirkuk and in other disputed territories, such as Ninewa.

Some Reject Article 140 But It Should Not be Ignored

¶12. (C) At the same time, Sunni Arabs, Turkmen and some minorities reject not only Kurdish territorial moves, but in some cases the legitimacy of Article 140 itself. They posit that constitutional reform of Article 140 must be completed before addressing disputed territories, including Kirkuk. Some argue that the article itself expired after the December 31 deadline passed and it is no longer valid. According to press reports, two non-Kurdish members of the Article 140 high committee resigned over claims the article has expired. The CoR's constitutional reform committee referred the article to the Federal Supreme Court in early January to get an opinion on its constitutionality. The likelihood is that Article 140 will be either validated or extended, because this narrow legal issue is really a political one. Politically the Kurds will not let it go away and the Maliki

government needs the Kurds to survive.

¶13. (C) Regardless of its constitutional status, the issues that Article 140 (and TAL 58) was intended to address will remain central to Iraq's national political dialogue. At the same time, they are unlikely to be adequately covered by simply following the normalization-census-referendum sequence laid out in TAL 58 step-by-step. Putting any resolution in place will require a series of political deals along all of the affected areas from the Syrian border to Mandali. As Senior Advisor noted to several Kurdish CoR members on January 22, "Article 140 is more than a referendum, or a deadline, or even settling the future status of Kirkuk. Article 140 is about defining the relations between the Kurds and the rest of Iraq" (ref B).

Boundary Changes Recommendation Submitted to PM

¶14. (C) In an effort to show some action before the expiration of the December 31, 2007 constitutional deadline, the Article 140 high committee submitted -- on December 31 -- recommendations to the Prime Minister on proposed boundary changes in the north, south and near Baghdad. Committee chairman Raid Fahmi characterized the recommendations as a technical rolling back of boundary changes that Saddam Hussein made for political reasons. The recommendations clearly reflect Shia and Kurdish druthers rather than Sunni Arab. For example, one most notable effect of the recommendations would be to restore the pre-Baath boundaries of Kirkuk Province (which was halved in size and renamed Tameem by various Baath-era decrees) by reattaching Kurdish-majority regions now in neighboring provinces. Another key recommendation is to move the vast Nukhayb district bordering Saudi Arabia from Anbar province to Karbala province, an idea that has already engendered loud protests by Anbaris (ref C). However, as Fahmi admits, the report should be viewed as a trigger for political action and not as the likely end result. The proposed changes must still go to the Presidency Council (including through Vice President Hashimi) for political agreement, followed by the CoR. For now, they sit in the PM's office, and there is no expectation that they will be forwarded anytime soon. For them to move, a comprehensive political agreement will be required. And the current package addresses key Kurdish and Shia concerns, but not those of the Sunnis, e.g. in Ninewa.

Way Forward on Four Tracks

¶15. (C) Moving towards a fair, transparent and agreed resolution will require continued active engagement by the U.S., UN and others. Given the complexity of the issues involved, UNAMI appears to intend, as a general rule, to start with the least difficult issues, in the hope of showing some initial progress, and then move gradually to the more difficult things, keeping the toughest ones, i.e. Kirkuk, for last. Working on technical matters on the front end will also allow time for political discussion.

¶16. (C) The issues can be divided into four main tracks:

-- Technical: The Article 140 high committee and the GOI have advanced some aspects of normalization, such as compensation of returning Wafadin. Other areas, such as the resolution of property disputes, are woefully behind. Progress can and should be accelerated. To clear the backlog, the Prime Minister's Office will need to address staff and resource

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issues at the Commission on Resolution of Real Property Disputes (CRRPD). To assist with this, UNAMI is also looking for an expert to advise the CRRPD.

-- Technical/Political: As previewed by SRSF Staffan De Mistura (ref D), UNAMI is using its expanded mandate in UNSCR

1770 to assist with resolving disputed internal boundaries. It is currently identifying several disputed areas for in-depth assessment using a wide set of criteria to complement electoral constituency mapping (using the 2005 election results). Such criteria include, but are not limited to, population demographics, topography, natural resources, strategic assets, cultural heritage, trade and economic interests and historical boundaries. UNAMI believes that such assessment will help shape the final political compromises that will be required by all stakeholders for a new boundary to be drawn that will be seen as legitimate and therefore contribute to Iraq's long-term stability.

-- National Political: Progress on Article 140 issues will help, and be helped by, progress on other aspects of national political accommodation, such as elections, provincial powers, hydrocarbons and revenue distribution. A political deal on Article 140, and particularly the status of Kirkuk, may ultimately hinge on how well all of these issues come together. For example, codifying national sharing of oil revenues could help alleviate concerns about the political loyalty and ties of an expanded KRG. The requisite consensus will need to involve not only the 3 plus 1 leadership (Presidency Council and Prime Minister) and KRG President Barzani but also fair consideration of the rights of other key stakeholders, such as the Turkmen, Christians, Yazidis, and other minorities.

-- Security: At all stages, there will be a direct interlock between continued progress on security and the ability and incentive of Iraqi politicians to achieve political progress on the difficult issues inherent in Article 140. Standing up Iraqi Army and Iraqi Police units that are viewed as neutral will be increasingly important in disputed areas. It will be particularly key in localities where the Pesh Merga and Asayesh have overreached and where their presence may need to be rolled back in the context of an overall political accord. Accordingly, local policing, Sahwa movements and continued coalition/ISF operations against AQI and the insurgency will be an essential prerequisite for political progress, whether in Kirkuk or other disputed areas around the country.

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